

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

THOMAS J. DUFF,)	NO. _____
)	
Plaintiff,)	PETITION, APPLICATION FOR
)	INJUNCTIVE RELIEF AND FOR
vs.)	EXPEDITED HEARING
)	
GOVERNOR KIMBERLY K.)	
REYNOLDS, GLEN DICKINSON,)	
LESLIE HICKEY and DAN HUITINK,)	
)	
Defendants.)	

Plaintiff for cause of action states:

1. Plaintiff Thomas J. Duff is a lawyer licensed in Iowa who regularly practices in Iowa courts and is a resident of Polk County.
2. In the summer of 2019 Plaintiff Duff was an unsuccessful applicant before the State Judicial Nominating Commission for a vacancy on the Iowa Court of Appeals.
3. Defendant Kimberly Kay Reynolds is the Governor of Iowa and as such is the Chief Executive for the state, responsible for ensuring the execution of the State's statutes. The Governor is sued in her official capacity.
4. Defendant Glen Dickinson is the Director of the Legislative Services Agency, a nonpartisan central legislative staff agency under the direction and control of the Legislative Council. Its duties include publication of the Iowa Acts. Iowa Code Chapter 2A. Glen Dickinson is sued in his official capacity.
5. Defendant Leslie Hickey is the Iowa Code Editor. The Iowa Code Editor is appointed by the Director of the Legislative Services Agency. The Editor's duties include publishing the Iowa Acts. Iowa Code Section 2B.13. Leslie Hickey is sued in her official capacity.

6. Defendant Dan Huitink was appointed by the Governor to the State Judicial Nominating Commission on May 10, 2019. He is sued in his official capacity.

The Law

7. The Iowa Constitution, Article III, Section 29, prohibits logrolling by requiring a legislative act to have only one subject.

Sec. 29. Acts — one subject — expressed in title. SEC. 29. Every Act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.

8. The Iowa Constitution, Article III, Section 29, requires the title of the bill to contain the subject matter of the bill to prevent fraud and surprise.

9. The Iowa Constitution, Article IV, Section 1, establishes separate and co-equal branches of government.

The powers of the government of Iowa shall be divided into three separate departments—the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

10. The Iowa Constitution, Article V, vests the judicial power in the Supreme Court.

Background

11. Senate File 638 was known as the “Standings Bill,” providing for appropriations. However, it was amended during debate to change how judicial

nominating commissioners are selected and how the Chief Justice is selected and the term of office.

12. The Iowa legislature passed Senate File 638 as amended on April 27, 2019.

13. In passing Senate File 638, the Iowa legislature failed to amend the title to reflect the amendment.

14. On May 8, 2019, Governor Reynolds signed Senate File 638 into law (attached as Exhibit 1).

15. On May 10, 2019, Governor Reynolds used the new authority in Senate File 638 to appoint Dan Huitink as the ninth gubernatorial appointment to the State Judicial Nominating Commission.

16. A vacancy was created in the Iowa Court of Appeals with the retirement of Judge Gayle Vogel on July 1, 2019.

17. Plaintiff Duff applied for the vacant Court of Appeals position. On August 5, 2019 Plaintiff Duff was interviewed by the State Judicial Nominating Commission.

18. On August 5, 2019, the State Judicial Nominating Commission submitted three nominees to the Governor. Plaintiff Duff's name was not one of the nominees submitted by the State Judicial Nominating Commission to the Governor.

Constitutional Violations

Count I

19. Senate File 638 contained more than a single subject, in violation of the Iowa Constitution, Article III, Section 29.

20. The enactment of Senate File 638 is a violation of the Iowa constitutional protection against logrolling.

Count II

21. Senate File 638, in violation of the Iowa Constitution, Article III, Section 29, failed to include in its title an accurate description of the subject matter of the bill, which included changes to Iowa's Judicial Nominating Commission and selection and term of office of the Chief Justice of the Supreme Court.

22. The enactment of Senate File 638 is a violation of the Iowa constitutional protection to prevent surprise and fraud from being visited on the legislature and the public.

Count III

23. The enactment of Senate File 638 violates Article III and Article V of the Iowa Constitution by dictating to a separate and co-equal branch of government how its leadership (Chief Justice) should be selected and the term of office.

24. That portion of Senate File 638 pertaining to changes in the selection and term of office of the Chief Justice should be found unconstitutional as a legislative encroachment on judicial powers.

Injunctive Relief (IRCP 1.1501-1.1511)

25. Plaintiff is entitled to preliminary and permanent injunctive relief invalidating the changes contained in Senate File 638 that affect the selection of judicial nominating commissioners and selection and term of office of the the Chief Justice and enjoining the defendants from enforcing or utilizing its provisions.

26. Defendants are acting and threatening to act under color of state law to deprive plaintiffs of their constitutionally protected rights.

27. Plaintiff will suffer irreparable injury and will continue to suffer real and immediate threat of irreparable injury as a result of the existence, operation, enforcement and threat of enforcement of the challenged sections of Senate File 638.

28. Plaintiff has no plain, adequate or speedy remedy at law.

29. As shown by the attached affidavit (Exhibit 2), Plaintiff is entitled to relief which includes restraining the publication of that portion of Senate File 638 pertaining to the judicial nominating commissioners and the selection and term of office of the Chief Justice, which would greatly or irreparably injure plaintiff.

30. A petition with different plaintiffs sought the same relief but was refused by this court on June 23, 2019, wherein the court found plaintiffs lacked standing to proceed. *Rush, et al. v. Reynolds, et al.*, Case No. CVCV058127, is presently on appeal to the Iowa Supreme Court.

31. There are no foreseeable monetary damages that would arise from issuance of a temporary injunction order. Therefore, Plaintiff requests that should the Court order a bond be filed, that it not exceed \$100.

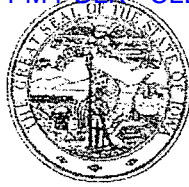
Request for Relief

Plaintiff respectfully requests an order in judgment:

1. Setting this matter for expedited hearing on the request for temporary injunctive relief;
2. Declaring those portions of Senate File 638 dealing with selection of judicial nominating commissioners and the selection and term of office of the Chief Justice to be unconstitutional;
3. Temporarily and thereafter permanently enjoining defendants as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with them from enforcing or utilizing the changes contained in Senate File 638 dealing with selection of judicial nominating commissioners and the selection and term of office of the Chief Justice;
4. Awarding any further relief as the Court may deem just and proper.

/s/ Bob Rush

BOB RUSH, AT0006817
NATE WILLEMS, AT0009260
RUSH & NICHOLSON, P.L.C.
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ATTORNEYS FOR PLAINTIFF



KIM REYNOLDS
GOVERNOR

OFFICE OF THE GOVERNOR

ADAM GREGG
LT GOVERNOR

May 8, 2019

The Honorable Paul Pate
Secretary of State of Iowa
State Capitol
Des Moines, Iowa 50319

Dear Mr. Secretary,

I hereby transmit:

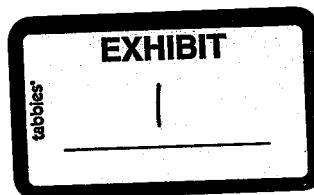
Senate File 638, An Act relating to state and local finances by making appropriations, providing for legal and regulatory responsibilities, providing for other properly related matters, and including effective date, applicability, and retroactive applicability provisions.

The above House File is hereby approved on this date.

Sincerely,

A handwritten signature in black ink that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa





Senate File 638

AN ACT

RELATING TO STATE AND LOCAL FINANCES BY MAKING APPROPRIATIONS,
PROVIDING FOR LEGAL AND REGULATORY RESPONSIBILITIES,
PROVIDING FOR OTHER PROPERLY RELATED MATTERS, AND INCLUDING
EFFECTIVE DATE, APPLICABILITY, AND RETROACTIVE APPLICABILITY
PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

STANDING APPROPRIATIONS AND RELATED MATTERS

Section 1. LIMITATIONS OF STANDING APPROPRIATIONS — FY
2019-2020. Notwithstanding the standing appropriation in the
following designated section for the fiscal year beginning July
1, 2019, and ending June 30, 2020, the amount appropriated from
the general fund of the state pursuant to that section for the
following designated purpose shall not exceed the following
amount:

For payment of claims for nonpublic school transportation
under section 285.2:

..... \$ 8,197,091

If total approved claims for reimbursement for nonpublic
school pupil transportation exceed the amount appropriated in
accordance with this section, the department of education shall
prorate the amount of each approved claim.

Sec. 2. INSTRUCTIONAL SUPPORT STATE AID — FY 2019-2020. In
lieu of the appropriation provided in section 257.20,
subsection 2, the appropriation for the fiscal year

beginning July 1, 2019, and ending June 30, 2020, for paying instructional support state aid under section 257.20 for such fiscal year is zero.

Sec. 3. Section 257.35, Code 2019, is amended by adding the following new subsection:

NEW SUBSECTION. 13A. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2019, and ending June 30, 2020, shall be reduced by the department of management by fifteen million dollars. The reduction for each area education agency shall be prorated based on the reduction that the agency received in the fiscal year beginning July 1, 2003.

Sec. 4. SPECIAL FUNDS — SALARY ADJUSTMENTS —
UNAPPROPRIATED MONEYS — FY 2019-2020 — FY 2020-2021. For the fiscal year beginning July 1, 2019, and ending June 30, 2020, and for the fiscal year beginning July 1, 2020, and ending June 30, 2021, salary adjustments otherwise provided may be funded as determined by the department of management, subject to any applicable constitutional limitation, using unappropriated moneys remaining in the department of commerce revolving fund, the gaming enforcement revolving fund, the gaming regulatory revolving fund, the primary road fund, the road use tax fund, the fish and game protection fund, and the Iowa public employees' retirement fund, and in other departmental revolving, trust, or special funds for which the general assembly has not made an operating budget appropriation.

DIVISION II

MISCELLANEOUS APPROPRIATIONS

Sec. 5. DEPARTMENT OF PUBLIC SAFETY.

1. There is appropriated from the general fund of the state to the department of public safety for the fiscal year beginning July 1, 2019, and ending June 30, 2020, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For costs associated with the training and equipment needs of volunteer fire fighters:

..... \$ 50,000

2. Notwithstanding section 8.33, moneys appropriated in this section that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure only for the purpose designated in this section until the close of the succeeding fiscal year.

3. Notwithstanding section 8.39, the department of public safety may reallocate moneys appropriated in this section and moneys appropriated in 2019 Iowa Acts, Senate File 615, section 15, if enacted, as necessary to best fulfill the needs provided for in the appropriation. However, the department shall not reallocate moneys appropriated to the department in this section and moneys appropriated in 2019 Iowa Acts, Senate File 615, section 15, if enacted, unless notice of the reallocation is given to the legislative services agency and the department of management prior to the effective date of the reallocation. The notice shall include information regarding the rationale for reallocating the moneys. The department shall not reallocate moneys appropriated in this section and moneys appropriated in 2019 Iowa Acts, Senate File 615, section 15, if enacted, for the purpose of eliminating any program.

DIVISION III

MISCELLANEOUS PROVISIONS

Sec. 6. Section 2C.18, Code 2019, is amended to read as follows:

2C.18 Report to general assembly.

The ombudsman shall by ~~April 1~~ December 31 of each year submit an economically designed and reproduced report to the general assembly and to the governor concerning the exercise of the ombudsman's functions during the preceding ~~calendar~~ fiscal year. In discussing matters with which the ombudsman has been concerned, the ombudsman shall not identify specific persons if to do so would cause needless hardship. If the annual report criticizes a named agency or official, it shall also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected.

Sec. 7. Section 558.69, Code 2019, is amended by adding the following new subsection:

NEW SUBSECTION. 9. Notwithstanding section 331.604 or any other provision of law to the contrary, the county recorder

shall not charge or collect a fee for the submission or filing of a groundwater hazard statement.

DIVISION IV

CORRECTIVE PROVISIONS

Sec. 8. Section 29C.20C, if enacted by 2019 Iowa Acts, Senate File 570, section 1, is amended to read as follows:

29C.20C Immunity — licensed architects and professional engineers.

An architect licensed pursuant to chapter 544A or a professional engineer licensed pursuant to chapter 542B who, during a disaster emergency as proclaimed by the governor or a major disaster as declared by the president of the United States, in good faith and at the request of or with the approval of a national, state, or local public official, law enforcement official, public safety official, or building inspection official believed by the licensed architect or professional engineer to be acting in an official capacity, voluntarily and without compensation provides architectural, engineering, structural, electrical, mechanical, or other design professional services related to the disaster emergency or major disaster shall not be liable for civil damages for any acts or omissions resulting from the services provided, unless such acts or omissions constitute recklessness or willful and wanton misconduct. A licensed architect or professional engineer who receives expense reimbursement for the performance of services described in this section shall not be considered to have received compensation for such services.

Sec. 9. Section 216A.133, subsection 3, paragraph 1, if enacted by 2019 Iowa Acts, House File 634, section 5, is amended to read as follows:

1. Recommending to the ~~board~~ department the adoption of rules pursuant to chapter 17A as it deems necessary for the board and division.

Sec. 10. Section 225C.51, subsection 1, paragraph a, if enacted by 2019 Iowa Acts, House File 690, section 8, is amended to read as follows:

a. The director of the department of human services or the director's designee.

Sec. 11. Section 225C.51, subsection 3, if enacted by 2019

Iowa Acts, House File 690, section 8, is amended to read as follows:

3. The director of the department of human services and the director of the department of education, or their designees, shall serve as co-chairpersons of the state board. Board members shall not be entitled to a per diem as specified in section 7E.6 and shall not be entitled to actual and necessary expenses incurred while engaged in their official duties.

Sec. 12. Section 261H.3, subsections 1 and 2, as enacted by 2019 Iowa Acts, Senate File 274, section 3, are amended to read as follows:

1. Noncommercial expressive activities protected under the provisions of this chapter include but are not limited to any lawful oral or written means by which members of the campus community may communicate ideas to one another, including but not limited to all forms of peaceful assembly, protests, speeches including by invited speakers, distribution of literature, circulating petitions, and publishing, including publishing or streaming on an internet site, or audio or video recorded in outdoor areas of campus.

2. A member of the campus community who wishes to engage in noncommercial expressive activity in outdoor areas of campus shall be permitted to do so freely, subject to reasonable time, place, and manner restrictions, and as long as the member's conduct is not unlawful, does not impede others' access to a facility or use of walkways, and does not disrupt the functioning of the public institution of higher education, subject to the protections of subsection 1. The public institution of higher education may designate other areas of campus available for use by the campus community according to institutional policy, but in all cases access to designated areas of campus must be granted on a viewpoint-neutral basis within the bounds of established principles of the first amendment principles to the Constitution of the United States.

Sec. 13. Section 322C.2, subsection 20, if enacted by 2019 Iowa Acts, Senate File 435, section 2, is amended to read as follows:

20. "*Towable recreational vehicle dealer*" or "*dealer*" means a person required to be licensed under this chapter who is

authorized to sell and service towable recreational vehicles.

Sec. 14. Section 322C.15, subsection 2, paragraph b, if enacted by 2019 Iowa Acts, Senate File 435, section 12, is amended to read as follows:

b. The manufacturer's or distributor's business operations have been abandoned or caused the dealer's business operations to close for ten consecutive business days. This ~~subparagraph~~ paragraph does not apply if the closing is due to a normal seasonal closing and the manufacturer or distributor notifies the dealer of the planned closing, an act of God, a strike, a labor difficulty, or any other cause over which the manufacturer or distributor has no control.

Sec. 15. Section 456A.33C, subsection 1, unnumbered paragraph 1, if enacted by 2019 Iowa Acts, House File 765, section 18, is amended to read as follows:

For purposes of this section, unless the context otherwise requires, "*eligible water body*" means a body of water that ~~meet~~ meets all of the following criteria:

Sec. 16. Section 513D.2, subsection 2, Code 2019, as amended by 2019 Iowa Acts, House File 679, section 184, if enacted, is amended to read as follows:

2. The commissioner ~~or~~ of insurance may take any enforcement action under the commissioner's authority to enforce compliance with this chapter.

Sec. 17. Section 515I.4A, subsection 1, paragraph c, as enacted by 2019 Iowa Acts, Senate File 558, section 4, is amended to read as follows:

c. The board of directors of the insurer has passed a resolution seeking approval as a domestic surplus lines insurer in this state and stating that the insurer shall only write surplus ~~line~~ lines business. The resolution shall not be amended without approval of the commissioner.

Sec. 18. Section 522E.13, subsection 6, Code 2019, as amended by 2019 Iowa Acts, Senate File 559, section 6, is amended to read as follows:

6. Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section, it shall be in writing and sent within the notice period required pursuant to this section. Notices

and correspondence shall be sent to the licensed portable electronics vendor that is the policyholder at the portable electronics vendor's mailing or electronic mail address specified for that purpose and to its affected enrolled consumers' last known mailing or electronic mail addresses on file with the insurer or the portable electronics vendor. All notices and documents that are delivered by electronic means shall comply with section 505B.1, except for the provisions in section 505B.1, subsection 4. The insurer or portable electronics vendor shall maintain proof that the notice or correspondence was sent for not less than three years after that notice or correspondence was sent.

Sec. 19. Section 633.648, Code 2019, as amended by 2019 Iowa Acts, House File 610, section 34, if enacted, is amended to read as follows:

633.648 Appointment of attorney in compromise of personal injury settlements.

Notwithstanding the provisions of section 633.642 prior to authorizing a compromise of a claim for damages on account of personal injuries to the ~~ward~~ protected person, the court may order an independent investigation by an attorney other than by the attorney for the conservator. The cost of such investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship.

Sec. 20. Section 692C.1, subsection 1, paragraph a, if enacted by 2019 Iowa Acts, House File 681, section 1, is amended to read as follows:

a. "*Covered individual*" means an individual who has, seeks to have, or may have access to children, the elderly, or individuals with disabilities served by a qualified entity and who is employed by, volunteers with, or seeks to volunteer with a qualified entity; or owns or operates or seeks to own or operate, a qualified entity.

Sec. 21. 2019 Iowa Acts, Senate File 333, section 104, subsection 6, is amended to read as follows:

6. Sections 15E.206, subsection 3, paragraph "a"; 15E.207, subsection 2, paragraph "b", subparagraph (2), subparagraph division (c); 15E.208, subsection 5, paragraph "g", subparagraphs (1) and (2); 15E.208, subsection 6,

paragraph "d", subparagraph (1), subparagraph division (a); 135.61, unnumbered paragraph 1; 135.61, subsection 1, paragraph "d"; 135.61, subsection 4; 135.62, subsection 1; 135.62, subsection 2, paragraph "f", subparagraphs (2), (4), and (5); 135.63, subsection 1; 135.63, subsection 2, unnumbered paragraph 1; 135.63, subsection 2, paragraph "f"; 135.63, subsection 2, paragraph "g", subparagraph (1); 135.63, subsection 2, paragraph "h", subparagraph (1), unnumbered paragraph 1; 135.63, subsection 2, paragraph "j"; 135.63, subsection 2, paragraph "k", subparagraph (1), unnumbered paragraph 1; 135.63, subsection 2, paragraph "l", unnumbered paragraph 1; 135.63, subsection 2, paragraphs "m" and "n"; 135.63, subsection 2, paragraph "p", unnumbered paragraph 1; 135.63, subsection 3; 135.64, subsection 3; 135.72, unnumbered paragraph 1; 135.73, subsection 1; 135.73, subsection 2, unnumbered paragraph 1; 135.73, subsection 3; 135.74, subsections 1 and 3; 135.75, subsection 2; 135.76, subsection 1; 135.100, unnumbered paragraph 1; 135.105A, subsection 5; 135.108, unnumbered paragraph 1; 135.140, unnumbered paragraph 1; 249K.2, subsection 6; 490.120, subsection 12, paragraph "c", subparagraph (1); 490.140, subsection 29; 490.640, subsection 8; 490.809, subsection 2; 490.858, subsection 2; 490.1101, unnumbered paragraph 1; 490.1105, subsection 3; 490.1107, subsection 1, paragraph "h"; 490.1107, subsection 2; 490.1107, subsection 4, paragraph "b"; 490.1108, subsection 1; 490.1114, subsection 1; 490.1114, subsection 2, paragraph "g"; 490.1202, subsection 7; 490.1301, unnumbered paragraph 1; 490.1320, subsection 1; 490.1320, subsection 3, paragraphs "a" and "b"; 490.1322, subsection 2, paragraph "c"; 490.1323, subsection 3; 490.1331, subsection 1; 490.1340, subsection 2, paragraph "a", subparagraph (1); 490.1403, subsection 3; 490.1405, subsection 2, paragraph "c"; 499.69A, subsection 6; 524.1309, subsection 8; 524.1406, subsection 1; 524.1417, subsection 1; and 524.1805, subsection 6, Code 2019, are amended by striking the word "division" and inserting in lieu thereof the word "subchapter".

Sec. 22. EFFECTIVE DATE. The following, being deemed of immediate importance, take effect upon enactment:

1. The section of this division of this Act amending section

29C.20.

2. The section of this division of this Act amending section 261H.3, subsections 1 and 2.

Sec. 23. EFFECTIVE DATE. The following takes effect January 1, 2020:

The section of this division of this Act amending section 633.648.

Sec. 24. RETROACTIVE APPLICABILITY. The following applies retroactively to the effective date of 2019 Iowa Acts, Senate File 570, if enacted:

The section of this division of this Act amending section 29C.20.

Sec. 25. RETROACTIVE APPLICABILITY. The following applies retroactively to March 27, 2019:

The section of this division of this Act amending section 261H.3, subsections 1 and 2.

Sec. 26. APPLICABILITY. The following applies to guardianships and guardianship proceedings for adults and conservatorships and conservatorship proceedings for adults and minors established or pending before, on, or after January 1, 2020:

The section of this division of this Act amending section 633.648.

DIVISION V

FLOOD RECOVERY

Sec. 27. NEW SECTION. 418.16 Flood recovery fund.

1. A flood recovery fund is established in the state treasury under the control of the board. The fund shall consist of moneys appropriated to the fund by the general assembly and any other moneys available to, obtained by, or accepted by the board for deposit in the fund. Moneys in the fund are appropriated to the department and shall be used for the purposes designated in this section. Moneys in the fund shall not supplant any federal disaster recovery moneys.

2. The board may award moneys from the fund to eligible political subdivisions of the state. A political subdivision of the state is eligible to receive moneys from the fund if the political subdivision is located in a county designated under presidential disaster declaration DR-4421-IA and is also

located in a county where the federal emergency management agency's individual assistance program has been activated.

3. In order to be awarded moneys from the fund, a political subdivision of the state shall submit a project application to the department for consideration by the board. The board shall prescribe application forms and application instructions. Project applications shall include all of the following:

a. A description of the project and the manner in which the project supports flood response, flood recovery, or flood mitigation activities.

b. A description of the financial assistance needed from the fund.

c. Details on any additional moneys to be applied to the project.

4. *a.* The board shall review all project applications. During the review of a project application, the board shall consider, at a minimum, all of the following:

(1) Whether the project supports flood response, flood recovery, or flood mitigation activities.

(2) Whether moneys from the fund are essential to meet the necessary expenses or serious needs of the political subdivision related to flood response, flood recovery, or flood mitigation.

b. Upon review of a project application, the board shall approve, defer, or deny the application. If a project application is approved, the board shall specify the amount of moneys from the fund awarded to the political subdivision. The board shall negotiate and execute on behalf of the department all necessary agreements to provide the moneys. If a project application is deferred or denied, the board shall state the reasons for such deferral or denial.

5. Notwithstanding section 8.33, moneys in the fund that remain unencumbered or unobligated at the close of a fiscal year shall not revert but shall remain available for expenditure for the purposes designated in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

Sec. 28. FLOOD RECOVERY APPROPRIATION. There is

appropriated from the general fund of the state to the department of homeland security and emergency management, for the fiscal year beginning July 1, 2018, and ending June 30, 2019, the following amount, or so much thereof as is necessary, to be credited to the flood recovery fund created in section 418.16, as enacted by this Act, and used for the purposes designated in section 418.16, as enacted by this Act:

..... \$ 15,000,000

Sec. 29. EMERGENCY RULES. The department of homeland security and emergency management may adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b", to implement the provisions of this division of this Act and the rules shall be effective immediately upon filing unless a later date is specified in the rules. Any rules adopted in accordance with this section shall also be published as a notice of intended action as provided in section 17A.4.

Sec. 30. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION VI

STATE BUDGET PROCESS

Sec. 31. Section 8.6, Code 2019, is amended by adding the following new subsection:

NEW SUBSECTION. 16. *Salary model administrator.* To designate a position within the department to serve as the salary model administrator.

a. The salary model administrator shall work in conjunction with the legislative services agency to maintain the state's salary model used for analyzing, comparing, and projecting state employee salary and benefit information, including information relating to employees of the state board of regents.

b. The department of revenue, the department of administrative services, the institutions governed by the state board of regents pursuant to section 262.7, each judicial district's department of correctional services, and the state department of transportation shall provide salary data to the department of management and the legislative services agency to operate the state's salary model. The format and frequency

of provision of the salary data shall be determined by the department of management and the legislative services agency.

c. The information shall be used in collective bargaining processes under chapter 20 and in calculating the funding needs contained within any annual salary adjustment legislation. A state employee organization as defined in section 20.3, subsection 4, may request information produced by the model, but the information provided shall not contain information attributable to individual employees.

Sec. 32. Section 8.23, subsection 1, unnumbered paragraph 1, Code 2019, is amended to read as follows:

On or before October 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director, on blanks to be furnished by the director, estimates of their expenditure requirements, including every proposed expenditure, for the ensuing fiscal year, ~~classified so as to distinguish between expenditures estimated for administration, operation, and maintenance, and the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character,~~ together with supporting data and explanations as called for by the director after consultation with the legislative services agency.

Sec. 33. Section 8.23, subsection 1, paragraph a, Code 2019, is amended to read as follows:

a. The estimates of expenditure requirements shall be ~~based upon seventy-five percent of the funding provided for the current fiscal year accounted for by program reduced by the historical employee vacancy factor in a form specified by the director, and the remainder of the estimate of expenditure requirements~~ shall include all proposed expenditures and shall be prioritized by program or the results to be achieved. The estimates shall be accompanied ~~with~~ by performance measures for evaluating the effectiveness of the ~~program programs or results.~~

Sec. 34. Section 602.1301, subsection 2, paragraph a, unnumbered paragraph 1, Code 2019, is amended to read as follows:

As early as possible, but not later than December 1, the

supreme court shall submit to the legislative services agency the annual budget request and detailed supporting information for the judicial branch. The submission shall be designed to assist the legislative services agency in its preparation for legislative consideration of the budget request. The information submitted shall contain and be arranged in a format substantially similar to the format specified by the director of the department of management and used by all departments and establishments in transmitting to the director estimates of their expenditure requirements pursuant to section 8.23, ~~except the estimates of expenditure requirements shall be based upon one hundred percent of funding for the current fiscal year accounted for by program, and using the same line item definitions of expenditures as used for the current fiscal year's budget request, and the remainder of the estimate of expenditure requirements prioritized by program.~~ The supreme court shall also make use of the department of management's automated budget system when submitting information to the director of the department of management to assist the director in the transmittal of information as required under section 8.35A. The supreme court shall budget and track expenditures by the following separate organization codes:

DIVISION VII

BLACKOUT SPECIAL REGISTRATION PLATES

Sec. 35. Section 321.34, Code 2019, is amended by adding the following new subsection:

NEW SUBSECTION. 11C. *Blackout plates.*

a. Upon application and payment of the proper fees, the director may issue blackout plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, autocycle, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Blackout plates shall be designed by the department. A blackout plate's background shall be black, and the plate's letters and numbers shall be white.

c. The special blackout fee for letter-number designated blackout plates is thirty-five dollars. An applicant may obtain personalized blackout plates upon payment of the fee for personalized plates as provided in subsection 5, which is in

addition to the special blackout fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and deposited in the road use tax fund.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special blackout fee for letter-number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized blackout plates is five dollars which shall be paid in addition to the annual special blackout fee and the regular annual registration fee. The annual special blackout fee shall be credited as provided under paragraph "c".

e. The department shall not condition the issuance of blackout plates on the receipt of any number of orders for blackout plates.

Sec. 36. Section 321.166, subsection 9, Code 2019, is amended to read as follows:

9. Special registration plates issued pursuant to section 321.34, other than gold star, medal of honor, collegiate, fire fighter, ~~and~~ natural resources, and blackout registration plates, shall be consistent with the design and color of regular registration plates but shall provide a space on a portion of the plate for the purpose of allowing the placement of a distinguishing processed emblem or an organization decal. Special registration plates shall also comply with the requirements for regular registration plates as provided in this section to the extent the requirements are consistent with the section authorizing a particular special vehicle registration plate.

DIVISION VIII

GAMBLING REGULATION

Sec. 37. Section 99F.7A, subsection 3, if enacted by 2019 Iowa Acts, Senate File 617, section 10, is amended to read as follows:

3. A licensee under this section may enter into operating agreements with one or two entities to have up to a total of

two individually branded internet sites to conduct advance deposit sports wagering for the licensee, unless one additional operating agreement or individually branded internet site is authorized by the commission. However, a person shall not sell, grant, assign, or turn over to another person the operation of an individually branded internet site to conduct advance deposit wagering for the licensee without the approval of the commission. This section does not prohibit an agreement entered into between a licensee under this section and an advanced deposit sports wagering operator as approved by the commission.

Sec. 38. Section 99F.13, Code 2019, is amended to read as follows:

99F.13 Annual audit of licensee operations.

Within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the licensee's total gambling operations, including an itemization of all expenses and subsidies. For a licensed subsidiary of a parent company, an audit of the parent company meets the requirements of this section. All audits shall be conducted by certified public accountants authorized to practice in the state of Iowa under chapter 542 ~~who are selected by the board of supervisors of the county in which the licensee operates.~~

DIVISION IX

PUBLIC UTILITIES

Sec. 39. Section 476.6, subsection 15, paragraph c, subparagraphs (2) and (4), Code 2019, are amended to read as follows:

(2) Notwithstanding the goals developed pursuant to paragraph "b", the board shall not require or allow a gas utility to adopt an energy efficiency plan that results in projected cumulative average annual costs that exceed one and one-half percent of the gas utility's expected annual Iowa retail rate revenue from retail customers in the state, shall not require or allow an electric utility to adopt an energy efficiency plan that results in projected cumulative average annual costs that exceed two percent of the electric utility's expected annual Iowa retail rate revenue from retail

customers in the state, and shall not require or allow an electric utility to adopt a demand response plan that results in projected cumulative average annual costs that exceed two percent of the electric utility's expected annual Iowa retail rate revenue from retail customers in the state. For purposes of determining the two percent threshold amount, the board shall exclude from an electric utility's expected annual Iowa retail rate revenue the revenues expected from customers that have received exemptions from energy efficiency plans pursuant to paragraph "a". This subparagraph shall apply to energy efficiency plans and demand response plans that are effective on or after January 1, 2019.

(4) The board shall approve, reject, or modify a plan filed pursuant to this subsection no later than March 31, 2019. If the board fails to approve, reject, or modify a plan filed by a gas or electric utility on or before such date, any plan filed by the gas or electric utility that was approved by the board prior to May 4, 2018, shall be terminated. The board shall not require or allow a gas or electric utility to implement an energy efficiency plan or demand response plan that does not meet the requirements of this subsection.

DIVISION X

BOARD OF REGENTS CAPITAL PROJECTS

Sec. 40. BOARD OF REGENTS CAPITAL PROJECTS REPORT.

1. The state board of regents shall submit a written report, including such information and recommendations as required by this section, to the general assembly by December 13, 2019, regarding the financing of capital projects at institutions under the control of the state board of regents.

2. The written report shall include a list of all capital projects initiated by an institution under the control of the state board of regents since January 1, 2004, in which the state provided at least a part of the financing for the project from an appropriation from the rebuild Iowa infrastructure fund created in section 8.57. For each project listed, the report shall include all of the following information:

- a. Total cost of each project.
- b. The amount and percentage of each project financed through donations and gifts from private sources.

c. The amount and percentage of each project financed through funding from the federal government.

d. The amount and percentage of each project financed through institution sources.

e. The amount and percentage of each project financed through state dollars.

f. The amount and percentage of each project financed through other sources.

g. Whether each project was considered a renovation or new construction.

3. The written report shall include, for each year since January 1, 2004, the percentage of capital project costs that were covered by donations and gifts from private sources for capital projects that did not receive state funding.

4. The written report shall include information regarding how the state board of regents defines new construction and renovations, a list of capital projects initiated due to extraordinary circumstances, and the current method used by the state board of regents and institutions under the control of the state board of regents to develop financing plans for capital projects.

5. The written report shall also include recommendations to the general assembly regarding the following:

a. The type of capital projects that should be eligible for state funding.

b. The share of state-funded capital projects that should be funded with non-state dollars.

c. How the fundraising plan will be developed for state-funded projects.

Sec. 41. REPEAL. Section 262.67, if enacted by 2019 Iowa Acts, House File 765, section 16, is repealed.

DIVISION XI

WATERSHED MANAGEMENT AUTHORITIES

Sec. 42. Section 466B.22, Code 2019, is amended by adding the following new subsection:

NEW SUBSECTION. 5. If a portion of a United States geological survey hydrologic unit code 8 watershed is located outside of this state, any political subdivision in such a watershed may participate in any watershed management authority

which includes the county in which the political subdivision is located.

DIVISION XII

ELECTIONS

Sec. 43. 2019 Iowa Acts, House File 692, section 33, if enacted, is amended to read as follows:

SEC. 33. EFFECTIVE DATE.

1. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

2. Notwithstanding subsection 1, the section of this division of this Act amending section 39.2 takes effect July 1, 2019.

Sec. 44. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 45. RETROACTIVE APPLICABILITY. This division of this Act applies retroactively to the date of enactment of 2019 Iowa Acts, House File 692, if enacted.

DIVISION XIII

JUDICIAL NOMINATING COMMISSION MODERNIZATION

Sec. 46. Section 46.1, Code 2019, is amended to read as follows:

46.1 Appointment of state judicial nominating commissioners.

1. The governor shall appoint, subject to confirmation by the senate, ~~one eligible elector of each congressional district~~ nine eligible electors to the state judicial nominating commission ~~for a six-year term beginning and ending as provided in section 69.19.~~

2. The appointments made by the governor shall be staggered terms of six years each and shall begin and end in even-numbered years as provided in section 69.19. The terms of no more than three nor less than two of the ~~members~~ commissioners shall expire within the same two-year period.

3. No more than a simple majority of the ~~members~~ commissioners appointed by the governor shall be of the same gender.

4. All commissioners shall be chosen without reference to political affiliation.

5. There shall be at least one commissioner appointed by the governor from each congressional district and there shall

not be more than two commissioners appointed by the governor from a single congressional district unless each congressional district has at least two commissioners appointed by the governor.

6. A commissioner who has served a full six-year term on the state judicial nominating commission, whether the commissioner was appointed or elected, shall be ineligible to be appointed to a second six-year term.

7. No person may be appointed who holds an office of profit of the United States or of the state at the time of appointment.

Sec. 47. Section 46.2, Code 2019, is amended by striking the section and inserting in lieu thereof the following:

46.2 Election of state judicial nominating commissioners.

1. The resident members of the bar of each congressional district shall elect two eligible electors of different genders to the state judicial nominating commission.

2. The commissioners elected by the bar shall serve staggered terms of six years each and shall be elected in the month of January for terms commencing July 1 of odd-numbered years. The terms of no more than three of the commissioners shall expire within the same two-year period.

3. All of the commissioners elected by the bar shall be chosen without reference to political affiliation.

4. A commissioner who has served a full six-year term on the state judicial nominating commission, whether the commissioner was appointed or elected, shall be ineligible to be elected to a second six-year term.

5. No person may be elected who holds an office of profit of the United States or of the state at the time of election.

Sec. 48. Section 46.2A, Code 2019, is amended by striking the section and inserting in lieu thereof the following:

46.2A Special appointment of state judicial nominating commissioners and transition provisions.

1. The initial term of the ninth commissioner appointed by the governor shall begin on the effective date of this division of this Act and shall expire on April 30, 2024.

2. After the initial term is served pursuant to subsection 1, a new commissioner shall be appointed by the governor to a

six-year term as provided in section 46.1.

3. The terms of any commissioner currently serving on the state judicial nominating commission or any commissioner already elected to begin serving on July 1, 2019, shall not be affected by this Act.

Sec. 49. Section 46.5, Code 2019, is amended to read as follows:

46.5 Vacancies.

1. When a vacancy occurs in the office of an appointive judicial nominating commissioner, the chairperson of the particular commission shall promptly notify the governor in writing of such fact or the governor may take note of such a vacancy. Vacancies in the office of an appointive judicial nominating commissioner shall be filled by appointment by the governor, consistent with eligibility requirements. The term of state judicial nominating commissioners so appointed shall commence upon their appointment pending confirmation by the senate at the then session of the general assembly or at its next session if it is not then in session. The term of district judicial nominating commissioners so appointed shall commence upon their appointment.

2. ~~Except where the term has less than ninety days remaining, vacancies in the office of elective member of the state judicial nominating commission shall be filled consistent with eligibility requirements by a special election within the congressional district where the vacancy occurs, such election to be conducted as provided in sections 46.9 and 46.10. An appointive commissioner shall be deemed to have submitted a resignation if the commissioner fails to attend a meeting of the commission that is properly noticed under section 46.13 and at which the commission conducts interviews or selects nominees for judicial office. The governor, in the governor's discretion, may accept or reject the resignation. If the governor accepts the resignation, the governor shall notify the commissioner and the chairperson of the commission in writing and shall then make another appointment.~~

3. Vacancies in the office of elective judicial nominating commissioner ~~of district judicial nominating commissions~~ shall be filled consistent with eligibility requirements ~~and by~~

~~majority vote of the authorized number of elective members of the particular commission, at a meeting of such members called in the manner provided in section 46.13. The term of judicial nominating commissioners so chosen shall commence upon their selection by a special election within the judicial election district or congressional district where the vacancy occurs unless the term has less than ninety days remaining, in which case the office shall remain vacant. The special election shall be completed within ninety days of the vacancy arising and shall be conducted as provided in sections 46.9, 46.9A, and 46.10.~~

4. If a vacancy occurs in the office of chairperson of a the state judicial nominating commission, or in the members of the commission shall elect a new chairperson as provided in section 46.6. If a vacancy occurs in the office of chairperson of a district judicial nominating commission or in the absence of the chairperson, the members of the particular commission shall elect a temporary chairperson from their own number.

5. ~~When a vacancy in an office of an elective judicial nominating commissioner occurs, the state court administrator shall cause to be mailed to each member of the bar whose name appears on the certified list prepared pursuant to section 46.8 for the district or districts affected, a notice stating the existence of the vacancy, the requirements for eligibility, and the manner in which the vacancy will be filled. Other items may be included in the same mailing if they are on sheets separate from the notice. The election of a district judicial nominating commissioner or the close of nominations for a state judicial nominating commissioner shall not occur until thirty days after the mailing of the notice. Notwithstanding section 69.1A, appointed and elected commissioners on the state and district judicial nominating commissions shall not hold over until their successor is elected and qualified.~~

6. All judicial nominating commissioners, including those elected by the bar, shall be subject to removal by the executive council in the same manner as appointive state officers under section 66.26. When the status of a judicial nominating commissioner is in question, the governor shall be the officer responsible for deciding whether a vacancy exists

under section 69.2.

Sec. 50. Section 46.6, Code 2019, is amended to read as follows:

46.6 Equal seniority Chairperson.

~~If the judges of longest service, other than the chief justice, of the supreme court or of the district court in a district are of equal service, the eldest of such judges shall be chairperson of the particular judicial nominating commission.~~

1. The commissioners of the state judicial nominating commission shall elect a chairperson from their own number. The chairperson shall serve a two-year term that expires on April 30 of even-numbered years. A commissioner may be reelected for a second or third term as chairperson. If a chairperson of a judicial nominating commission desires to be relieved of the duties of chairperson while retaining the status of commissioner, the chairperson shall notify the governor and the other commissioners of the commission. At the next meeting of the commission, the commissioners shall elect a new chairperson for the remainder of the two-year term.

2. The judge of longest service in the district shall serve as the chair of a particular district judicial nominating commission. If the judges of longest service in the district are of equal service, the eldest of such judges shall be chairperson of the particular judicial nominating commission.

Sec. 51. Section 46.7, Code 2019, is amended to read as follows:

46.7 Eligibility to vote.

To be eligible to vote in elections of judicial nominating commissioners, a member of the bar must be eligible to practice and must be a resident of the state of Iowa and of the appropriate congressional district or judicial election district ~~as shown by the member's most recent filing with the supreme court for the purposes of showing compliance with the court's continuing legal education requirements, or for members of the bar eligible to practice who are not required to file such compliance, any paper on file by July 1 with the state court administrator, for the purpose of establishing eligibility to vote under this section, which the court~~

~~determines to show the requisite residency requirements at the time the member votes in the election. The member's residency shall be determined by the home address shown on the member's most recent electronic or paper submission to the commission on continuing education and the client security commission or on the member's bar admission records.~~ A judge who has been admitted to the bar of the state of Iowa shall be considered a member of the bar.

Sec. 52. Section 46.8, Code 2019, is amended to read as follows:

46.8 Certified list.

1. Each year the ~~The~~ state court administrator shall ~~certify a~~ maintain a certified list of the names, addresses, electronic mail addresses, and years of admission of members of the bar who are eligible to vote for state and district judicial nominating commissioners.

2. Upon request, the state court administrator shall provide the certified list in electronic form and without charge to any properly qualified nominee for state or district judicial nominating commissioner.

Sec. 53. Section 46.9, Code 2019, is amended to read as follows:

46.9 Conduct of elections.

1. When an election of judicial nominating commissioners is to be held, the state court administrator shall administer the voting. The state court administrator may administer the voting by electronic notification and voting or by paper ballot mailed to each eligible attorney. The state court administrator shall mail paper ballots to eligible attorneys or electronically notify and enable eligible attorneys to vote. ~~The elector receiving the most votes shall be elected. When more than one commissioner is to be elected, the electors receiving the most votes shall be elected, in the same number as the offices to be filled.~~

2. The state court administrator shall provide a voting period of at least twenty-one days from when the electronic voting notification is sent or the paper ballots are mailed during which eligible attorneys may vote electronically or submit a paper ballot.

3. In an election to elect a single commissioner, each eligible attorney may cast a single vote, and the qualified eligible elector receiving the most votes shall be elected.

4. In an election to elect one male commissioner and one female commissioner, each eligible attorney may cast one vote for male commissioner and one vote for female commissioner, and the qualified eligible elector of each gender receiving the most votes shall each be elected.

5. The election results, including the number of votes cast for each elector and the total number of the members of the bar eligible to vote in each election, shall be made publicly available on the judicial branch internet site and shall be reported to the governor and to the general assembly within ten days after the conclusion of the election.

Sec. 54. Section 46.9A, Code 2019, is amended to read as follows:

46.9A Notice preceding nomination of elective nominating commissioners.

At least sixty days prior to the expiration of the term of an elective state or district judicial nominating commissioner or the expiration of the period within which a special election must be held, the state court administrator shall ~~mail paper ballots to eligible attorneys or electronically notify and enable eligible attorneys to vote.~~ An eligible attorney is a member of the bar whose name appears on the certified list prepared pursuant to section 46.8 for the district or districts affected provide notice of the current or upcoming vacancy and the nomination and election process by making the notice publicly available on the judicial branch internet site, issuing a press release, and electronically notifying members of the bar. The election shall not commence until at least thirty days after the issuance of the notice required by this section.

Sec. 55. Section 46.10, Code 2019, is amended to read as follows:

46.10 Nomination of elective judicial nominating commissioners.

1. In order to have an eligible elector's name printed on the ballot for state or district judicial nominating

commissioner, the eligible elector must file in the office of the state court administrator at least thirty days prior to expiration of the period within which the election must be held a nominating petition signed by at least ~~fifty resident members of the bar~~ ten eligible electors of the congressional district in case of a candidate for state judicial nominating commissioner, or at least ~~ten resident members of the bar~~ eligible electors of the judicial district in case of a candidate for district judicial nominating commissioner. ~~No member of the bar may sign more nominating petitions for state or district judicial nominating commissioner than there are such commissioners to be elected.~~

2. Ballots or electronic voting forms for state and district judicial nominating commissioners shall contain blank lines equal to the number of such commissioners to be elected, where names may be written in. Any electronic voting form must permit a voter to write in the name of any eligible elector.

Sec. 56. Section 46.11, Code 2019, is amended to read as follows:

46.11 Certification of commissioners.

~~The~~ Upon making an appointment, the governor and the state court administrator respectively shall promptly certify the names and addresses of ~~appointive and elective~~ judicial nominating commissioners to the state commissioner of elections ~~and the chairperson of the respective nominating commissions.~~ Upon the completion of an election, the state court administrator shall certify the names and addresses of the elected judicial nominating commissioners to the state commissioner of elections and the governor.

Sec. 57. Section 46.12, subsection 1, Code 2019, is amended to read as follows:

1. When a vacancy occurs or will occur within one hundred twenty days in the supreme court, the court of appeals, or district court, the state commissioner of elections shall forthwith so notify the ~~chairperson of the proper judicial nominating commission~~ governor. ~~The chairperson~~ governor shall call a meeting of the proper judicial nominating commission within ten days after such notice; if the ~~chairperson~~ governor fails to do so, the chief justice shall call such meeting.

Sec. 58. Section 46.13, Code 2019, is amended to read as follows:

46.13 Notice of meetings and application process.

1. The governor or chairperson of each judicial nominating commission shall give the members of the commission at least five days' written notice by mail or electronic mail of the time and place of every meeting, except as to members who execute written waivers of notice at or before the meeting or unless the commission at its next previous meeting designated the time and place of the meeting.

2. Each commission, with the technical support of the judicial branch, shall publish all of the following on the judicial branch internet site:

a. Notice that the commission is accepting applications for judge or justice along with a copy of the application form at least two weeks before applications are required to be submitted to the commission.

b. Copies of nonconfidential application materials submitted by applicants.

c. The schedule of applicant interviews before the commission.

d. The list of nominees submitted by the commission to the governor and the chief justice.

3. Commissioners shall be permitted to conduct individual interviews with applicants in advance of the commission's meetings to choose the nominees.

4. The state judicial nominating commission shall adopt uniform rules for the state and district judicial nominating commissions that shall be consistent with this chapter and shall provide for a uniform and fair process for the commissions to consider applicants and select nominees. The state judicial nominating commission shall provide for a public comment period of at least thirty days on its proposed uniform rules prior to adopting the rules and shall adopt the rules within six months of the effective date of this division of this Act. Such rules shall be made publicly available on the judicial branch internet site.

Sec. 59. NEW SECTION. 46.15A Severability and judicial review.

1. If any provision or clause of this chapter or any application of this chapter to any person or circumstances is held invalid, such invalidity shall not affect other provisions, clauses, or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions and clauses of this chapter are declared to be severable.

2. Notwithstanding any provision of law to the contrary, if any provision of this chapter is preliminarily enjoined, no judicial nominating commission shall meet to nominate persons to serve as a judge or justice while the preliminary injunction is in effect or while any appeal of the preliminary injunction or a related permanent injunction is pending unless the injunction is subsequently stayed or otherwise lifted.

Sec. 60. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION XIV

CHIEF JUSTICE SELECTION

Sec. 61. Section 602.4103, Code 2019, is amended to read as follows:

602.4103 Chief justice.

~~The justices of the supreme court shall select one justice as chief justice, to serve during that justice's term of office.~~

1. At the first meeting in each odd-numbered year, the justices of the supreme court by majority vote shall designate one justice as chief justice, to serve for a two-year term. A vacancy in the office of chief justice shall be filled for the remainder of the unexpired term by majority vote of the justices of the supreme court, after any vacancy on the court has been filled.

2. If the chief justice desires to be relieved of the duties of chief justice while retaining the status of justice of the supreme court, the chief justice shall notify the governor and the other justices of the supreme court. The office of chief justice shall be deemed vacant, and shall be filled as provided in this section.

3. The chief justice is eligible for reselection.

4. The chief justice shall appoint one of the other justices

to act during the absence or inability of the chief justice to act, and when so acting the appointee has all the rights, duties, and powers of the chief justice.

Sec. 62. NEW SECTION. 602.4103A Transition provisions.

1. The term of the chief justice serving on the effective date of this division of this Act shall expire on January 15, 2021, or upon the conclusion of the first meeting of the justices of the supreme court in January 2021, whichever occurs earlier.

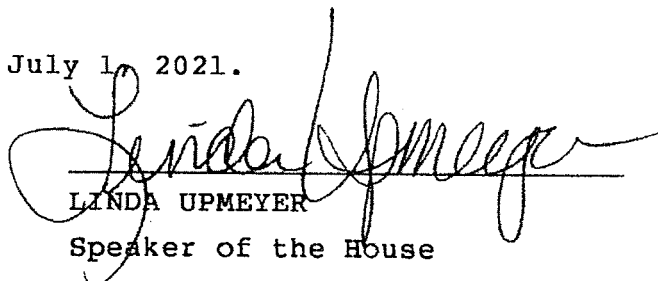
2. If the office of chief justice becomes vacant prior to the expiration of the term in January 2021, the office shall be filled for the remainder of the unexpired term as provided for in section 602.4103.

3. This section is repealed July 1, 2021.



CHARLES SCHNEIDER

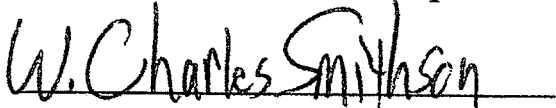
President of the Senate



LINDA UPMEYER

Speaker of the House

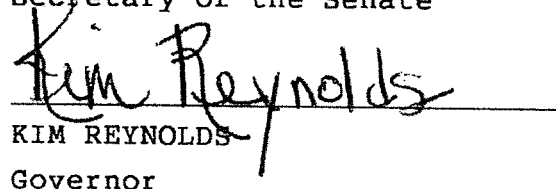
I hereby certify that this bill originated in the Senate and is known as Senate File 638, Eighty-eighth General Assembly.



W. CHARLES SMITHSON

Secretary of the Senate

Approved May 8th, 2019



KIM REYNOLDS

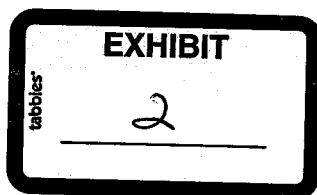
Governor

AFFIDAVIT

STATE OF IOWA)
) SS:
COUNTY OF POLK)

I, Thomas J. Duff, do under oath depose and state:

1. I am a practicing attorney in Iowa.
2. I was an applicant for the recent Court of Appeals vacancy.
3. Prior to enactment of Senate File 638, the State Judicial Nominating Commission had an even balance between attorney members elected by members of the Bar and individuals appointed by the Governor of Iowa.
4. By virtue of legislation (Senate File 638) signed into law by Governor Reynolds on May 8, 2019, the State Judicial Nominating Commission now has a majority of members appointed by the Governor.
5. With this new authority, on or about May 10, 2019, the Governor appointed a ninth Judicial Nominating Commission member. This ninth appointee replaced the senior-most justice (other than the Chief Justice) as a member of the Commission.
6. As the ninth gubernatorial appointment was made May 10, 2019, after the Iowa General Assembly had adjourned, this individual will not be subject to confirmation by the Iowa Senate until it comes into session in 2020.
7. When vacancies arise in Iowa's appellate courts, the Judicial Nominating Commission interviews applicants and submits three nominees to the Governor. Prior to May 8, 2019, it was not possible for all elected members of the Judicial Nominating Commission to vote in concert in a manner which determined the three applicants to be forwarded to the Governor. Similarly, prior to May 8, 2019, all the appointed members of the Judicial Nominating Commission could not vote in concert in a manner which determined the three applicants to be forwarded to the Governor.
8. The vote of the elected members of the Commission has been diluted. They no longer have a vote equal in weight to the appointed members.
9. On June 17, 2019, the Judicial Nominating Commission adopted a new voting method for selecting nominees. The document is titled "Successive Voting Method (3-Vote Method)." The very first application of rules in this document states, "9 or more Commissioners vote for the same 3 applicants • (If this occurs, the Commission's work is finished.)" Exhibit A.

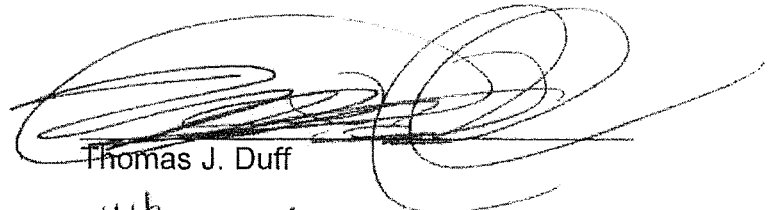


10. Even if all appointed members do not vote in concert, the weight of the elected members' votes has been diluted.

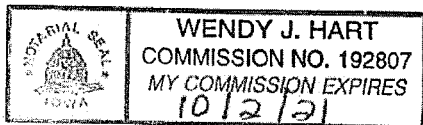
11. With the addition of the newest appointee on May 10, 2019, all nine appointed members of the State Judicial Nominating Commission are members of the Republican party. All have been either appointed by this Governor or her predecessor when she served as the lieutenant governor.

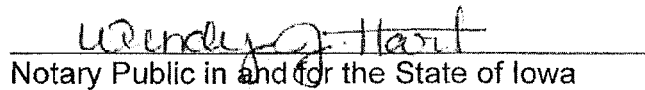
12. If nine Republican appointees, all appointed by the Branstad and Reynolds administrations, vote in concert on applicants for vacant appellate positions, I have been harmed in that the vote of elected members to the State Judicial Nominating Commission has been diluted.

13. Even if all nine Republican appointees, all appointed by the Branstad and Reynolds administrations, do not vote in concert, I will be harmed by having my vote as a member of the Bar diluted as elected members no longer have an equal balance between appointed and elected members. The vote of elected members has been diluted.


Thomas J. Duff

Subscribed and sworn to before me this 11th day of September, 2019.




Notary Public in and for the State of Iowa

**SUCCESSIVE VOTING METHOD
(3-VOTE METHOD)**

17 Commissioners cast 3 simultaneous votes each to elect 3 nominees.

9 or more Commissioners vote for the same 3 applicants

- (If this occurs, the Commission's work is finished.)

* * * *

9 or more Commissioners vote for the same 2 applicants

- (If this occurs, the Commissioners each cast 1 vote for 1 applicant to fill the remaining single vacancy. This process is followed until 3 nominees are selected.)

* * * *

9 or more Commissioners vote for the single applicant

- (If this occurs, the Commissioners each cast 2 votes for 2 applicants to fill the remaining two vacancies. This process is followed until 3 nominees are selected.)

9 or more Commissioners vote for 4 applicants¹

The likelihood of a 17-member commission casting 9 or more votes for four applicants based upon the three vote method is statistically unlikely.

- If such an outcome occurred the SCJNC would discuss the attributes of the four or five putative nominees and re-cast their three votes for only the four or five putative nominees to narrow the list of nominees to three nominees. This winnowing re-voting method mirrors the method used by the Commission that routinely occurs when no applicant receives the necessary nine votes and so repeated ballots are cast numerous times before an applicant receives the requisite number of nine votes.

9 or more Commissioners vote for 5 applicants²

The likelihood of a 17-member commission casting 9 or more votes for five applicants based upon the three vote method is statistically unlikely.

- If such an outcome occurred the SCJNC would discuss the attributes of the four or five putative nominees and re-cast their three votes for only the four or five putative nominees to narrow the list of nominees to three nominees. This further discussion/re-voting winnowing method mirrors the method used by the Commission that routinely occurs when no applicant receives the necessary nine votes and so, repeated ballots are cast numerous, numerous times before an applicant receives the requisite number of nine votes and the list of nominees is reduced to 3 nominees as required by Iowa Code.

¹ In this instance where 9 Commissioners cast ballots for the same 4 applicants (36 votes total), there would be 15 votes remaining that were not cast for those 4 applicants that would be cast for the 4 putative nominees on the next ballot completed by the Commissioners.

² In this instance where 9 Commissioners cast ballots for the same 5 applicants (45 votes total), there would be 6 votes remaining that were not cast for those 4 applicants that would be cast for the 4 putative nominees on the next ballot completed by the Commissioners.

